

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket HWCA 2003-0324
)	
S&W Atlas Iron and)	ENFORCEMENT AND
Metal Co., Inc.)	CORRECTIVE ACTION ORDER
10019 South Alameda Street)	
Los Angeles, California 90002)	
)	Section 25187
)	Health and Safety Code
)	
EPA ID No. CAD 981460116)	
)	
Respondent)	
_____)	

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement and Corrective Action Order (Order) to S&W Atlas Iron and Metal Co., Inc. (Respondent).

1.2. Site. Respondent generates hazardous waste at the following site: 10019 South Alameda Street, Los Angeles, California 90002 (Site).

1.3. Permit/Authorization Status. The Respondent generates the following hazardous wastes: used oil and absorbent contaminated with used oil.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated

specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

1.6. Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit 1.

DETERMINATION OF VIOLATION

2. The Department has determined that:

2.1. The Respondent violated Health and Safety Code section 25189.2; subdivision (c), in that on or about April 25, 2003, Respondent disposed or caused the disposal of lead, nickel and zinc onto the soil at the Site located at 10019 South Alameda Street, Los Angeles, California 90002. This Site does not have a permit or any other grant of authorization from the Department.

2.1.2. The Department has further determined that the foregoing violation and the potential off-site migration of hazardous waste or hazardous waste constituents may pose a significant threat to the public health or safety or the environment because there are residential, commercial and industrial developments in the nearby vicinity and Jordan High School in close proximity.

SCHEDULE FOR COMPLIANCE

3.1 Based on the forgoing Determination of Violations, IT IS HEREBY ORDERED THAT: Immediately upon receipt of this Order, Respondent shall take the following interim measures to achieve stabilization of the facility:

3.1.1 Respondent shall cover both piles of hazardous contaminated soil with a tarp, and secure the tarp with a device to prevent the piles from becoming uncovered at any time. The covers shall be maintained at all times by Respondent to prevent any release of hazardous waste or hazardous waste constituents into the environment through wind dispersion or other means. Respondent shall also place around the perimeter of each pile a berm to prevent water runoff from the piles.

3.1.2 Respondent shall perform other measures as necessary to contain present contamination and to prevent any future contamination onsite, in the nearby vicinity, and at Jordan High School, etc.

3.1.3 Immediately upon receipt of this Order Respondent shall cease accepting any soil commingled with scrap metal from off-site. No hazardous or non-hazardous soil or any other items shall be added to the two existing piles.

3.2.1. Within 30 days of the effective date of this Order, Respondent shall submit to Department a Workplan and a Schedule for the implementation of Interim Measures ("IM Workplan"). The IM Workplan is subject to approval by Department and shall provide for the performance of all Interim Measures necessary to remove the two soil piles of hazardous contaminated soil stored at the Site and to maintain those measures specified in section 3.1 of this Order to achieve stabilization.

3.2.2. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify Department Project Coordinator orally within 48 hours of discovery and notify Department in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the

potential threat to human health and/or the environment. Within 30 days of receiving the Department's written request, Respondent shall submit to the Department an IM Workplan for approval.

3.2.3. If the Department identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, the Department will notify Respondent in writing. Within 30 days of receiving Department's written notification, Respondent shall submit to Department for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in as Attachment 1. If the Department determines that immediate action is required, Department Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

3.2.4. All IM Work plans submitted by Respondent shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Site.

3.2.5. Concurrent with the submission of an IM Workplan, Respondent shall submit to the Department a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2.

3.2.6. Department has determined that there is a high level of community concern about the Site. Concurrent with the submission of an IM Workplan, Respondent shall submit to the Department for approval Public Participation Plan accordance with Attachment 3.

PRELIMINARY ENDANGERMENT ASSESSMENT

4. Respondent shall conduct a Preliminary Endangerment Assessment (PEA) for the entire Site and Jordan High School property adjacent to the Site, and if necessary, further investigation and remediation of any

release of hazardous waste or hazardous waste constituents at or from the Site into or on the neighboring Jordan High School property. Within 30 days of the Department's approval of the IM Workplan, Respondent shall submit to the Department a PEA Workplan and an implementation schedule for approval. Respondent shall implement the Department-approved PEA Workplan and schedule. Within 60 days upon completion of the PEA activities, Respondent shall submit to the Department a Final PEA Report for approval. Respondent shall conduct the PEA in accordance with the Preliminary Endangerment Assessment Guidance Manual (State of California Environmental Protection Agency, Department of Toxic Substances Control, June 1999.)

ADDITIONAL WORK

5. If based on the results of the PEA, Department determines that further investigation and remediation are necessary at the Site, the Department will amend this Order to address the additional work.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

6. The Department must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Order are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. The Department will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, the Department will conduct an Initial Study. Based on the results of the Initial Study, the Department will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. The Department will prepare and process any such Negative Declaration. However, should the Department determine that an EIR is necessary; such an EIR would be prepared under a separate agreement between the Department and Respondent.

DEPARTMENT APPROVAL

7.1. Respondent shall revise any work plan, report, specification, or schedule in accordance with the Department's written comments. Respondent shall submit to the Department any revised documents by the due date specified by the Department. Revised submittals are subject to the Department's approval or disapproval.

7.2. Upon receipt of the Department's written approval, Respondent shall commence work and implement any approved work plan in accordance with the schedule and provisions contained therein.

7.3. Any Department-approved work plan, report, specification, or schedule required under this Order shall be deemed incorporated into this Order.

7.4. Verbal advice, suggestions, or comments given by Department representatives will not constitute an official approval or decision.

SUBMITTALS

8. Submittals.

8.1 All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division,
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

Mr. Stephen W. Lavinger, Chief
Tiered Permitting Corrective Action Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

Diego Cadena
Los Angeles County Public Works Department
Assistant Deputy Director
Flood Maintenance Division
900 South Fremont Avenue
Alhambra, California 91803

William Jones
Los Angeles County Fire Department
Health Hazardous Material Section
5285 Rickenbacker Road
Commerce, California 90040

8.2. Respondent shall provide three copies of all documents, including but not limited to, work plans, reports, and correspondence. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

8.3. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Order shall be in writing and shall be sent to the current Project Coordinators.

PROJECT COORDINATOR

9. Within 14 days of the effective date of this Order, the Department and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Order and for designating a person to act in his/her absence. All communications between Respondent and Department, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

PROPOSED CONTRACTOR/CONSULTANT

10. All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Order, Respondent shall notify the Department Project

Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Order.

QUALITY ASSURANCE

11.1. All sampling and analyses performed by Respondent under this Order shall follow applicable Department and USEPA guidance for sampling and analysis. Work plans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved work plans must be approved by the Department prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

11.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable work plans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

12.1. Respondent shall submit to the Department upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Order.

12.2. Respondent shall notify the Department in writing at least seven days prior to beginning each separate phase of field work approved under any work plan required by this Order. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from Department Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

12.3. At the request of Department, Respondent shall provide or allow the Department or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent, the Department shall allow Respondent or its authorized representative to

take split or duplicate samples of all samples collected by the Department under this Order.

ACCESS

13. Subject to the Site's security and safety procedures, Respondent agrees to provide the Department and its representatives access at all reasonable times to the Site and any off-site property to which access is required for implementation of this Order and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Order and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

14.1. Respondent shall retain, during the pendency of this Order and for a minimum of six years after its termination, all data, records, and documents that relate in any way to the performance of this Order or to hazardous waste management and/or disposal at the Site. Respondent shall notify the Department in writing 90 days prior to the destruction of any such records, and shall provide Department with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Order and shall be addressed to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

14.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Order, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Order.

14.3. All documents pertaining to this Order shall be stored in a central location at the Site, or at a

location otherwise agreed to by the parties, to afford easy access by the Department and its representatives.

Government Liabilities

15. The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

Extension Request

16. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

Extension Approvals

17. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

DISPUTE RESOLUTION

18.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Order. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

18.2. If Respondent disagrees with any written decision by the Department pursuant to this Order, Respondent's Project Coordinator shall orally notify the Department's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

18.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Florence Gharibian, Branch Chief, Hazardous Waste Management Program, Statewide Compliance Division, Department of Toxic Substances Control, with a copy to the Department's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of the Department's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

18.4. The Department and Respondent shall have 14 days from the Department's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by the Department for good cause. During such period, Respondent may meet or confer with the Department to discuss the dispute.

18.5. After the formal discussion period, the Department will provide Respondent with its written decision on the dispute. The Department's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

18.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Order that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Order.

RESERVATION OF RIGHTS

19.1. The Department reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Order. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Order. This Order shall not be construed as a covenant not

to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that the Department or Respondent may have under any laws, regulations or common law.

19.2. The Department reserves the right to disapprove of work performed by Respondent pursuant to this Order and to request that Respondent perform additional tasks.

19.3. The Department reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. The Department may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. The Department reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. The Department will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

19.4. If the Department determines that activities in compliance or noncompliance with this Order have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, the Department may order Respondent to stop further implementation of this Order for such period of time as the Department determines may be needed to abate any such release or threat and/or to undertake any action which the Department determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Order affected by the order to stop work shall be extended to take into account the Department's actions.

19.5. This Order is not intended to be nor shall it be construed to be a permit. This Order is not a substitute for, and does not preclude the Department from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that the Department's approval of any work plan, plan, and/or specification does not constitute a warranty or representation that the work

plans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

20. Except as provided in this Order, nothing in this Order shall constitute or be construed as a release by the Department or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Site .

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

21. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

OTHER APPLICABLE LAWS

22. All actions required by this Order shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

Endangerment during Implementation

23. In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under

this section shall be extended for the term of the Stop Work Order.

REIMBURSEMENT OF DEPARTMENT'S COSTS

24.1 Respondent shall pay the Department's costs incurred in the implementation of this Order.

24.2 The Department will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

24.3. The Department will retain all costs records associated with the work performed under this Order as required by state law. The Department will make all documents that support the Department's cost determination available for inspection upon request, as provided by the Public Records Act.

24.4. Any dispute concerning the Department's costs incurred pursuant to this Order is subject to the Dispute Resolution provision of this Order and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. Department reserves its right to recover unpaid costs under applicable state and federal laws.

24.5. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
1001 I Street 21st Floor.
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division

Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

All checks shall reference the name of the Site, the Respondent's name and address, and the docket number of this Order. Copies of all checks and letters transmitting such checks shall be sent simultaneously to the Department's Project Coordinator.

MODIFICATION

25.1. This Order may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Order.

25.2. Any requests for revision of an approved work plan requirement must be in writing. Such requests must be timely and provide justification for any proposed work plan revision. The Department has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Florence Gharibian, Branch Chief, Statewide Compliance Division, Department of Toxic Substances Control, or his or her designee. Any approved work plan revision shall be incorporated by reference into this Order.

OTHER PROVISIONS

26.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

26.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health

and Safety Code section 25188 and other applicable provisions of law.

26.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

26.4. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

27. Based on the foregoing DETERMINATION OF VIOLATION, the Department sets the amount of Respondent's penalty at \$122,500.00 (One hundred twenty two thousand and five hundred dollars). Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Florence Gharibian, Chief
Glendale Branch
Statewide Compliance Division

Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201

RIGHT TO A HEARING

28. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respond.

EFFECTIVE DATE

29. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of issuance: November 25, 2003

Original signed by Robert Kou for:
Florence Gharibian,
Branch Chief
Statewide Compliance Branch
Department of Toxic
Substances Control